

1 not going to see the documents, and he's not going to be
2 told about what is in the -- specifically what's in the
3 documents, but you certainly can tell him generally what was
4 the documents are about.

5 Now, that's number one, and I mean I am not trying
6 to sound dictatorial about this, but I am trying to get some
7 decisions made here.

8 What about Mr. Jacobs? He is the general counsel?

9 MR. BECKNER: Yes, he is.

10 JUDGE SIPPEL: Anything else? Is he vice
11 president or is he --

12 MR. BECKNER: His title is vice president and
13 general counsel, and there are several Time Warner
14 organizations. For historical reason, different parts of
15 New York City were served by different entities, and so
16 these people have a number of different titles. That's why
17 if you want us to -- the party that we refer to as TWCNYC is
18 actually two entities, Time Warner Cable of New York City
19 and Paragon Cable of Manhattan, which in the past existed
20 separately and are now folded in.

21 And other members on the list there are general
22 counsel and assistant general counsel of each of those other
23 two sub-entities: Time Warner Cable of New York City and
24 Paragon Cable of Manhattan.

25 JUDGE SIPPEL: Well, do they have specialties?

1 For example, is one of them a vice president in charge of
2 acquisitions or something like that?

3 MR. BECKNER: No, they have no specialty title. I
4 would say again, you know, assistant general counsel or
5 general counsel.

6 Abby Strauss, for example, works closely with the
7 part of the company that is involved in marketing. And if
8 that's what you mean by your question, she has a specialty,
9 but that's not reflected in the title of any kind. That's
10 just something that's developed historically.

11 I would just like to respond briefly about
12 Rosenbloom. I assume you got the supplement filings that
13 each side made.

14 JUDGE SIPPEL: I did.

15 MR. BECKNER: Okay.

16 JUDGE SIPPEL: I did.

17 MR. BECKNER: Fine.

18 JUDGE SIPPEL: I have read those since.

19 MR. BECKNER: However, they should have been
20 provided too.

21 JUDGE SIPPEL: Yes, sir.

22 MR. BECKNER: The -- well.

23 JUDGE SIPPEL: All these people are attorneys.
24 They all work there. They are in-house counsel.

25 MR. BECKNER: That's correct.

1 JUDGE SIPPEL: For Time Warner, the limited Time
2 Warner that you are talking about.

3 MR. BECKNER: That's correct.

4 MR. SPITZER: Except for Mr. Schwartz, Your Honor,
5 Martin Schwartz.

6 MR. BECKNER: There is one -- Martin Schwartz is
7 also on the list. This is prior to before he became
8 counsel. He is in a law firm in New York City. He
9 represented Time Warner in New York City in the litigation
10 that Liberty brought against the FCC, and which I already
11 told you about, regarding the question of whether or not
12 they had to get a cable television franchise, and other
13 classes.

14 MR. SPITZER: And a slew of other cases. He is
15 the attorney who has deposed probably at least 50 percent of
16 Liberty.

17 JUDGE SIPPEL: All right. Well, it sounds like he
18 is a logical candidate then to see --

19 MR. SPITZER: Well, Your Honor, other than Mr.
20 Rosenbloom, we did not object. Mr. Beckner initially
21 proffered a list of 20 names, I think, and we negotiated and
22 we narrowed our differences down to the one name, Mr.
23 Rosenbloom, with respect to whom we submitted the
24 supplemental documents.

25 And not that we are thrilled with the other names

1 on the list, but Mr. Rosenbloom is the only one with respect
2 to whom we thought was sufficient objection to warrant
3 asking for a ruling from Your Honor.

4 JUDGE SIPPEL: All right. Is there anybody else
5 then?

6 That tells me then. I have a general
7 understanding as to who these people are. I would like to
8 see, however, the documents since this is going to be going
9 with the record. I would like to see the title and the
10 affiliations of all of these people on this sheet.

11 MR. BECKNER: Well, if it is acceptable to you,
12 what we will do is when this proceeding today is over we
13 will resubmit a revised list that has the formal title of
14 each person next to it, and that would presumably be the
15 only thing we would sign.

16 JUDGE SIPPEL: That's correct.

17 MR. BECKNER: Is that acceptable?

18 JUDGE SIPPEL: That's correct.

19 And Mr. Rosenbloom comes out.

20 MR. BECKNER: Yes, and I will not include Mr.
21 Rosenbloom.

22 JUDGE SIPPEL: Right.

23 I'm sorry. Mr. Holt?

24 MR. HOLT: I have nothing to say, Your Honor.

25 JUDGE SIPPEL: How about Barbara Kessler and Amy

1 Groveman, I mean, are they -- do you have an idea of who
2 they are?

3 MR. HOLT: They are both in-house counsel for
4 Cablevision Systems Corporation, which is the direct parent
5 corporation for Cablevision New York City, Phase I.

6 I believe Ms. Kessler's title is senior associate
7 counsel, cable operations. And I think Ms. Groveman's title
8 is associate counsel, but I have to confirm that.

9 JUDGE SIPPEL: But their work is exclusively
10 legal?

11 MR. HOLT: Indeed.

12 JUDGE SIPPEL: All right. While we are having
13 this exchange, by the way, I did receive your letter this
14 morning indicating that you do not have intentions to file a
15 motion to intervene on behalf of Cablevision of Hudson
16 County. And I have -- does any -- I have heard no
17 objections, no oppositions, no complaints from anybody about
18 that. And I don't see any reason why your full
19 participation -- you would not expect full participation.

20 So unless some situation does come up where it
21 becomes a problem that I cannot foresee right now, we are
22 just going to go forward with the representation as you have
23 it now.

24 MR. HOLT: Thank you, Your Honor.

25 MR. BEGLEITER: Your Honor, I said something

1 before, I wanted to make sure I clarified it.

2 Mr. Schwartz didn't have the case of Liberty in
3 federal court. He has also been involved in other
4 litigation involving Liberty, although Liberty was not a
5 party, and he did depose the owner of Liberty and the
6 general manager of Liberty, and other employees. Just to
7 clarify it for the record.

8 JUDGE SIPPEL: All right. Well, thank you.
9 That's helpful for me because obviously if somebody like Mr.
10 Schwartz on the Time Warner team, in a manner of speaking,
11 there is an awful lot known about Liberty that I am not
12 aware of even being known about. So this is not a situation
13 where the parties are coming in here on a cold record. And
14 that further illustrates the form.

15 All right, the other comment I have is with
16 respect to the limitation on transcripts on page 7. And it
17 sounds -- it reads, rather, that what I could anticipate or
18 what could be anticipated is that these transcripts are
19 going to be stacked up in somebody's office someplace for an
20 indeterminate period of time before they even hit the
21 secretary's office.

22 And I don't want to put this in terms of an order
23 or a command right now, but what I would like the parties to
24 think about and come to a conclusion pretty quickly is what
25 about a procedure that's similar to what -- here is what

1 they used to use, they probably still do, at the Federal
2 Trade Commission, where you mask out the confidential
3 material, and you put the masked version on the public
4 record. And then you put the unmasked version as the
5 original of a transcript without any deletions, without any
6 editing. It goes into a sealed envelope, and you file that
7 with the secretary so you have a public transcript and
8 you've got a nonpublic transcript.

9 MR. SPITZER: Your Honor, the only concern that
10 led to the language that I think you are discussing is one
11 of timing. Given what we presume to be the rapidity with
12 which depositions will be moving forward, we just wanted to
13 make sure that the parties had time to go over the
14 transcripts, to do the redaction that you are suggesting,
15 and then file the documents precisely as you suggested
16 without, you know, running into deadlines that prevented us
17 from conducting the discovery.

18 I believe we can work, we will work assiduously to
19 do just what you suggest.

20 JUDGE SIPPEL: Can you work some kind of language
21 in that, general language in there to that effect; that, you
22 know, by the time that the record is closed in this case
23 that that will be done?

24 MR. SPITZER: We will work with that.

25 MR. BECKNER: Yes, we originally, I think, had a

1 deadline in there for post -- for designation of
2 confidential portions of the transcript. Of course, the
3 idea is that ideally, while the deposition is being taken,
4 to the extent that it's possible, that the lawyer asking the
5 questions will ask the confidential stuff in a separate time
6 in the deposition, and the court reporter will bound up --
7 you know, bind up that part of the transcript separately
8 from the rest. So that when the transcript comes, it will
9 come in two pieces: a confidential piece and another piece,
10 although there may be further designation of the other piece
11 that might be necessary.

12 But I think we have pretty well put in the most
13 rapid way of doing this that we can think of. I mean, I
14 will go back and look at it again with your concerns in mind
15 to make sure that it's done as quickly as we can do it.

16 JUDGE SIPPEL: Fine. Now, Mr. Beckner, I just
17 wanted -- I mean, I am going to sign off on this, and I just
18 wanted to be sure that I am signing off on something that
19 ultimately is going to be done -- ultimately it's going to
20 get done the right way.

21 And when I was reading that section it just didn't
22 seem to cover that situation. I mean, there could be a foot
23 note in there, something. Even just a general statement
24 that this procedure or a comparable procedure to as I have
25 outlined will be done before the record is closed in this

1 case. And it goes from me through wherever it's going to
2 go.

3 Mr. Weber, do you have anything on this?

4 MR. WEBER: That's acceptable. I mean, it's
5 required that all depositions be filed with the secretary.

6 JUDGE SIPPEL: Ultimately.

7 MR. WEBER: Ultimately. So we have no objection
8 to that.

9 MR. SPITZER: We will work with Mr. Beckner and
10 Mr. Weber, too, to do this.

11 JUDGE SIPPEL: All right. Now, once that is done,
12 as I say, just bring me the -- all you have to do is bring
13 me the signature page, and those two pages that will show
14 what we have talked about here. I will sign it and give it
15 to you, and then you can give me something with a copy of my
16 signature on it.

17 MR. BECKNER: All right.

18 JUDGE SIPPEL: And then I guess the original would
19 probably go over to the secretary's office and put right on
20 the record.

21 I am assuming that you -- I mean, you have seen
22 this, Mr. Weber, and that you don't have any objection to
23 any of this?

24 MR. WEBER: That is correct.

25 MR. SPITZER: Your Honor, I did receive on Friday,

1 I believe, is that correct?

2 MR. WEBER: No, last night.

3 MR. SPITZER: Your draft confidentiality order?

4 MR. WEBER: Right.

5 MR. SPITZER: Right, it was last night, so we
6 still have to work through the mechanics of that.

7 JUDGE SIPPEL: What is that?

8 MR. SPITZER: Well, we had -- I won't belabor the
9 record, but we had been waiting for Mr. Weber to send us a
10 confidentiality order that would determine the circumstances
11 under which individuals other than the attorneys at the
12 Commission -- the Bureau working on this case could see the
13 documents, and we received that draft yesterday evening.
14 And so we have not yet had a chance to even review it. But
15 we will -- I'm sure that Mr. Weber and I will be able to
16 work something else immediately.

17 JUDGE SIPPEL: So there will be something over and
18 above this --

19 MR. SPITZER: That's correct.

20 JUDGE SIPPEL: -- that's going to cover the
21 Commission?

22 MR. SPITZER: Precisely, Your Honor.

23 JUDGE SIPPEL: Or Bureau staff, rather.

24 MR. SPITZER: That's correct, Your Honor.

25 JUDGE SIPPEL: All right. There is a provision in

1 there -- this is just an aside -- but there is a provision
2 in there for me to review contests of confidentiality, and I
3 am trusting that that's going to be someplace from zero to a
4 minimum, but I will do what has to be done.

5 MR. WEBER: Your Honor, we are putting together
6 the draft cases. I have some concerns that that may be an
7 issue that will be addressed.

8 I mean, obviously, we will work with -- we will do
9 all that we can for anything we want to put in the direct
10 case which they have already stamped "Confidential" to see
11 if the part they believe has not been redacted out, and we
12 can still use it for the information that we want to use it
13 for, if that can be worked out.

14 And if not, we may have to come to you, but that
15 is something that can be addressed later. This is just to
16 forewarn you.

17 JUDGE SIPPEL: Well, just a minute. I know, Mr.
18 Begleiter, you have got something. But this just jostles my
19 recollection of what I had been thinking about this. And
20 unless somebody has got a better idea, I would like to hear
21 it, but I think we should start with an admission session on
22 the first day of the hearing and get this stuff -- I don't
23 want witnesses hanging around while we are doing this,
24 unless we need them for clarification, of course.

25 I'm sorry, Mr. Begleiter?

1 MR. BEGLEITER: No, I just wanted to say that I
2 agree with Mr. Weber. We can work with him.

3 I just wanted to explain to Your Honor that we did
4 this -- we marked the documents "Confidential" very quickly,
5 over a week and a weekend. It was done by a number of
6 people. There are probably inconsistencies in what is
7 marked "Confidential," the same type of document that may
8 appear in different files. One may be marked "Confidential"
9 and one isn't.

10 But what I am getting at, Your Honor, if the Bureau
11 or Time Warner/Cablevision thinks a document should not be
12 marked "Confidential," just give us a call. We will either
13 redact it or remove the "Confidentiality" stamp if it's
14 inconsistent and we shouldn't have done it in the first
15 place. It wasn't done with scientific precision. I want to
16 admit that for the record.

17 JUDGE SIPPEL: Well, these things usually --

18 MR. BEGLEITER: Right.

19 JUDGE SIPPEL: And I want to take a harder look.
20 If there is a confidentiality claim of what's going into the
21 record at the hearing, I will take a much harder look at
22 that than I am in this discussion.

23 MR. SPITZER: If I can just add a footnote to
24 that, Your Honor.

25 Probably the majority of those documents that were

1 marked "Confidential" were marked because they disclose the
2 names, home addresses, and phone numbers of subscribers.
3 And we have agreements with the build-ins, and we have
4 explained this to counsel which require us to keep that
5 information confidential. And we don't believe that that is
6 information that they need for their case. And we have
7 discussed this with opposing counsel.

8 But nonetheless that is why many documents were
9 marked "Confidential." They have home phone numbers which,
10 frankly, are private, and we are bound by agreements to keep
11 that private.

12 JUDGE SIPPEL: Who needs that?

13 Go ahead, Mr. Weber?

14 MR. WEBER: Those would certainly be situations
15 where we will be able to work it out, and we will just say
16 we like this document and it may be addressed to, you know,
17 Mrs. Smith and 123 5th Avenue, and they want to redact that
18 part. That's fine, but the text of the letter that we think
19 is important. We will have no problem in that if they say
20 just take out the name and the address. We will be happy.
21 But there are a large number of documents stamped
22 "Confidential" that I am afraid some of them they may be
23 claiming confidentiality for portions that we believe are
24 relevant.

25 MR. SPITZER: We are free to discuss that. We are

1 free to discuss it.

2 JUDGE SIPPEL: That's what the discussions are
3 about.

4 Is there a -- I mean, have you turned over or are
5 you turning over lists of customers?

6 MR. SPITZER: No, but, Your Honor, there -- well,
7 their document requests were worded broadly, and we did our
8 best to comply with them. Any document, for instance, that
9 applies for a particular build-in, if it was on list A and
10 B, attached to the HDO. And obviously documents relating to
11 lists -- the build-ins on list A and B subsumed substantial
12 numbers of documents that were correspondence with tenants
13 of those buildings and subscribers which revealed this home
14 phone number and home address information.

15 JUDGE SIPPEL: What I would really strongly urge,
16 and I know this is just something I am reacting to what I am
17 hearing here, but there is a list of build-in occupancy,
18 customers, and you certainly want to know the number, maybe
19 the number of people in the building, and the number of
20 subscribers to the system at issue.

21 But after you get that information, I would --
22 those kind of documents, it seems to me, should be packed up
23 and returned to Liberty. I don't mean to say that you would
24 leave them laying around. I am being colloquial. But I
25 mean it's a -- think about it.

1 Okay, so we are past the protective order.

2 Stipulation based on the audit report, the AIR.

3 We talked about that at the last conference, and I have
4 written something about that, and I am asking Liberty now.

5 What is wrong with these? You know what I am
6 saying? We get together. The Bureau has already seen this
7 report, and there has got to be good information. Good in
8 the sense of relevant information.

9 While all this other discovery is going on, why
10 couldn't there be a team that's going to sit down and just
11 try and work that out?

12 MR. SPITZER: There is both relevant and good
13 information, Your Honor.

14 JUDGE SIPPEL: All right. I didn't want to
15 characterize it for you.

16 MR. SPITZER: Happy to accept your
17 characterization.

18 It is something that we focused on again, I
19 suppose, yesterday when we received your order. In Footnote
20 3 you refer once again to this.

21 Could we suggest, since we only began to focus on
22 that issue again with renewed interest late yesterday and
23 early today, it's something we wish to pursue, but we need
24 to think through and discuss with our client and discuss
25 with opposing counsel. And obviously it needs to be

1 reviewed on our side within the context of the pending D.C.
2 Circuit litigation.

3 And one of our concerns is enter into a
4 stipulation which could focus the issues in this hearing
5 without jeopardizing our position before the D.C. Circuit.
6 And we are trying to see if we can come up with some way of
7 satisfying both of those objectives. And we are hopeful
8 that maybe we can do that.

9 JUDGE SIPPEL: Well, in the general course that
10 would be made clear in whatever stipulation I was so
11 ordering or whatever.

12 MR. SPITZER: Right.

13 JUDGE SIPPEL: But there is nothing in there
14 that's going to compromise your position with respect to the
15 Court of Appeals. And really in a sense it might -- just a
16 minute, Mr. Beckner -- and it would cut back perhaps on some
17 of the work that the Court of Appeals would have to do
18 because then it may have to address themselves with the
19 things that you still -- you still insist on keeping
20 confidential, or that there is an attorney/client privilege
21 that you don't want to waive or something like that.

22 So, I do not see that this is being worked out at
23 cross purposes. And I think that if the Court of Appeals
24 were told that this is to accommodate and facilitate getting
25 a hearing done as opposed to waiting, and this is not going

1 to wait. I mean, I can assure you of that. We are not
2 going to wait for the Court of Appeals to get this case
3 tried. But it would make it, it seems to me it would make
4 it easier on everybody associated with this case if some of
5 that information could be used.

6 Mr. Beckner.

7 MR. BECKNER: Your Honor, I just want to remind
8 you, you probably don't need reminding, which you just write
9 a motion to compel, an order that you released yesterday.
10 And one of the things that we sought your directive to
11 require Liberty to answer that you chose not to require them
12 was who wrote that report, and who was interviewed in the
13 process of compiling the information that went into the
14 report.

15 Now, what I suggest to you is, is that if any part
16 of that report comes in this record, then certainly we are
17 entitled to know who wrote the report. And we are entitled
18 to know who or who the authors of that report is and who put
19 it together. I mean, that's the essential foundation to a
20 document.

21 I am not trying to test your patience by rearguing
22 a motion that you decided against us, but I feel compelled
23 to at least mention that with respect to any piece of that
24 report which comes into this record.

25 MR. SPITZER: You're --

1 JUDGE SIPPEL: Just a minute.

2 Mr. Holt?

3 MR. HOLT: If I could add my two cents, Your
4 Honor.

5 JUDGE SIPPEL: Yes, sir.

6 MR. HOLT: The sense that I am getting is that the
7 identity of the individuals listed in that report could help
8 narrow the determination we need to make as to who to
9 depose. And that the process that you are suggesting here
10 of entering into some sort of stipulation where non-
11 privileged communications can be -- factual information can
12 be taken out and provided to us -- would also significantly
13 enhance the party's ability to perceive with discovery.

14 And on the one hand, they are arguing we should
15 move forward rapidly on this matter, and on the other, they
16 want more time to work out some issues concerning their
17 concerns. And I don't say that they shouldn't be given that
18 time, but what I am saying is that I think that we should
19 have full information before we proceed with depositions in
20 order for them to be productive and develop evidence
21 relevant to this case.

22 And if there is important information that can be
23 taken out of that internal audit report, then I am
24 suggesting that that ought to be done before depositions
25 start so that we can move forward and have some meaningful

1 discovery.

2 JUDGE SIPPEL: I am not going to -- I'll tell you,
3 I am not going to hold this case up yet.

4 What I look upon that audit report as being is a
5 target of opportunity. You know you are going down a path,
6 that you are doing the work, and you are getting it, and all
7 of a sudden bingo, this things pops up on the horizon and
8 say, hey, if you could use that it would make this a lot
9 easier.

10 All right, now, it's out there with that
11 potential. There is always -- I mean, I have written on
12 this. As far as the Court of the Appeals, I am not going to
13 interfere with what the Court of Appeals has done as far as
14 trying to determine confidentiality issues, and privilege
15 issues.

16 MR. HOLT: Right, but --

17 JUDGE SIPPEL: So what have suggested here is kind
18 of a makeshift in between, and hopefully -- let's see what
19 the information is that could be put together. If the
20 information, and I get a chance to look at the document in
21 camera and compare that with the stipulation, if I think
22 it's going to be helpful to the case. You know, they are
23 not going to worry about what kind of foundation it needs
24 and what kind of witnesses, sponsoring witnesses are going
25 to be necessary before we go the next step. And maybe this

1 isn't going to work in light of the time frame of this case.
2 But I just think it's worth taking a shot at.

3 I don't want this -- to answer the other -- you
4 know, the rejection of the motion to compel to get identity
5 of people, again, I think we are going to end up going down
6 that same -- we are going to end up at some point without
7 discovery is going to run -- if we meet with loggerheads
8 with what's going on down at the Court of Appeals, and I
9 don't want to run the risk of having this case put on hold
10 or somehow or other slowed down because there is an appeal
11 from my ruling up to the Commission. I don't want to get
12 into that.

13 I want to know what is going to be looked upon as
14 being relevant evidence that can come in this case based on
15 that report. And I don't care whether it's privilege or
16 non-privilege. Whatever you are happy with, I want to see
17 it, and see if it's going to help move the case along.
18 That's all. If we can't get to it, we're going to go the
19 other way. And I really don't want a lot of those
20 questions. And I think we should move forward.

21 Okay, so you are going to continue to talk about
22 that.

23 Deposition schedule, there was supposed to be a
24 deposition schedule. I have -- I just have to see a
25 deposition schedule because I'm not comfortable with that

1 one. I want to find out by noon tomorrow what's going on.
2 The deposition schedule that I would like to see actually
3 would be copies of the notices. I mean, that would even be
4 better than -- I mean, you have to spend time working on the
5 schedule. But certainly by noon tomorrow, Mr. Weber, I want
6 to see notices. It doesn't have to be your universe of
7 witnesses, but I want to see notices, copies of notices that
8 have gone out.

9 I don't know. Can Time Warner do that too? I
10 would think that you could. You are going to do that for
11 the depositions anyway.

12 MR. BECKNER: Well, Your Honor, we can certainly
13 do that, but we can take Mr. Price's deposition tomorrow.
14 The question is, as Mr. Holt has already mentioned is, is
15 what's the value of taking a deposition of someone when you
16 don't have, you know, all of the information.

17 To be quite candid with you, and I'm not
18 suggesting that this is going to happen in this case, but I
19 have personally taken a number of depositions of CEOs who
20 don't remember a thing until you show them a document.

21 And then they say, "Ah, yes, I remember it. This
22 is my signature here."

23 Now, if we get into that kind of procedure here
24 with witnesses who have a normal lack of memory absent the
25 documents to refresh their recollection, and we don't have

1 the documents that we are entitled to get, then it's going
2 to be a not productive procedure.

3 JUDGE SIPPEL: Well, aside from privileged
4 documents and particularly, you know, the audit report, but
5 what is it that you are lacking?

6 You have got documents that are relevant. They
7 have been stamped "Confidential" now. And I mean, granted,
8 I understand that there is a lot of -- there is going to be
9 a lot of hard hours that is going to have to be put in to
10 get all this stuff in shape to present to someone.

11 You can get these depositions started. If you are
12 getting that kind of hard time from the witness, remember
13 Liberty has got the burden of proof in this case. If their
14 people are horsing around in depositions, they are going to
15 put themselves in a very bad position, and I am sure that
16 they know that. I mean, we are looking at people who should
17 be answering these questions.

18 The issues aren't that sophisticated. In my
19 judgment, they aren't. I mean, I don't mean to say that in
20 the sense that they are light issues. They are very heavy
21 issues. But I mean this is the -- this is not a theoretical
22 issue. This is to determine facts and circumstances on an
23 interconnected, not currently owned buildings without first
24 obtaining an franchise, bang. And there has been admissions
25 on that. So how many questions do you have to ask Mr.

1 Price about that?

2 You know, I am not asking you to tip your hand,
3 but it doesn't seem to me that there is an enormous amount
4 of preparation that needs to go into at least getting the
5 information up front from him. And as I say, if you are
6 running into that problem where he all of a sudden doesn't
7 remember things that he should remember, you know, come to
8 me.

9 MR. BECKNER: Well, just to respond on the record.
10 And I think, because Liberty has already basically taken
11 this position, Mr. Price is going to respond to that
12 question by saying, "Well, I had a good faith belief that I
13 didn't need a franchise."

14 So the question is what was the basis for his so-
15 called good faith belief. And then we get into every story
16 about how they had meetings with people, the New York
17 Department of Communications, who assured them that no
18 franchise was required. Maybe they relied on a letter from
19 their attorney who said that there was no franchise
20 required, et cetera, et cetera. That's what I am talking
21 about.

22 JUDGE SIPPEL: Do you already have him on the
23 record having said that?

24 MR. SPITZER: Well, Your Honor --

25 JUDGE SIPPEL: Let me ask Mr. Beckner. Hold it.

1 Is he already on the record having said just that?

2 MR. BECKNER: Well, I don't know what he said
3 personally. I am just saying that the position that Liberty
4 has asserted at various times in this case is that -- and it
5 was the basis for their motion to delete issue, which you
6 ruled against, was that, you know, we couldn't get a
7 franchise.

8 JUDGE SIPPEL: All right. So he gets on the
9 record and he says that. So what do you need?

10 MR. BECKNER: Well, I have to prove whether or not
11 it's true or not.

12 JUDGE SIPPEL: Well, they have got the burden of
13 proof. If this is all he can say is that, you know, is that
14 the best you can do, Mr. Price? I mean, if that's it, then
15 that's it.

16 I mean, listen, in between -- if he testifies that
17 way tomorrow, in between the time he tells you that story
18 and some time in June when he comes up to take the stand,
19 you are going to have a heck of a lot of information.

20 Now, you know, this is --

21 MR. SPITZER: Your Honor, all I would suggest is
22 he notice the deposition and take the deposition instead of
23 hypothesizing. He just created a very nice record, but take
24 the deposition and we will see what happens. I am not sure
25 what Mr. Beckner is saying.

1 JUDGE SIPPEL: Well, that's what I am trying to
2 get at. Let's take the man's deposition and find out. I
3 mean, you can -- you have got records. They have responded
4 with documents. I am taking you on good faith
5 representation that internally you already know something
6 about this company Time -- I'm sorry -- Liberty, and how it,
7 you know, the dynamics of Liberty and how it operates in
8 that market and who the people are. Look, I am looking at
9 this from outside in, and I can't tell you how to run your
10 litigation. I am just simply saying that what I am trying
11 to do is I am trying to light a fire here and start getting
12 some discovery underway.

13 But I am saying it, and then I am going to pass on
14 to another subject which is I am still with the deposition
15 schedule.

16 When can you tell me what you are going to do with
17 depositions? I don't want to give you a date certain and
18 then have you come in and say that, well, you still need
19 more time. But can you tell by Friday?

20 MR. WEBER: Immediately after this prehearing
21 conference we will meet with Liberty, starting trying to
22 arrange with them, winnow down our list as best as we can at
23 this point, and work with them about when these people are
24 available, and to come next week.

25 JUDGE SIPPEL: Okay.